

## **ARTICLE 1. ARIZONA CRIMINAL JUSTICE COMMISSION**

### **Crime Victim Compensation Program Rules**

#### **R10-4-101. Definitions**

In these rules:

1. “Allowable expense” means an amount authorized under these rules to be paid as a compensation award by the Board to a victim, a derivative victim, or both for economic loss.
2. “Board” means the Crime Victim Compensation Board of an operational unit.
3. “Claimant” means any natural person filing a claim under these rules and authorized to receive a compensation award for economic loss because the person is:
  - a. A victim of criminally injurious conduct;
  - b. A resident of this state who is injured by an act of international terrorism;
  - c. A derivative victim;
  - d. A person authorized to act on a victim’s behalf or a person authorized to act on behalf of a deceased victim’s dependent if the victim died as a direct result of criminally injurious conduct or an act of international terrorism; or
  - e. A person who assumes an obligation or pays an expense directly related to a victim’s economic loss incurred as a direct result of criminally injurious conduct or an act of international terrorism.
  - f. Claimant does not mean:
    - i. An offender, an accomplice of the offender, or a person who encouraged or in any way participated in or facilitated criminally injurious conduct or an act of international terrorism;
    - ii. A person serving a sentence of imprisonment in any detention facility, home arrest program, work furlough, or a person who has escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism; or

- iii. A person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense only if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim programs have access to an accurate and efficient criminal debt payment tracking system.
4. “Collateral source” means a source of compensation for economic loss that a claimant has received, or that is available to a claimant including:
- a. The offender or a 3rd party responsible for the offender’s actions;
  - b. The United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of 2 or more states, unless the law providing for the compensation makes the compensation excess or secondary to benefits under this rule, specifically excluding those federal funds granted under 42 U.S.C. 10602;
  - c. Social Security, Medicare, or Arizona Health Care Cost Containment System payments;
  - d. State-required, temporary, nonoccupational disability insurance;
  - e. Worker’s compensation insurance;
  - f. Wage continuation program of any employer;
  - g. Insurance proceeds payable to the victim or claimant for loss sustained due to the criminally injurious conduct or an act of international terrorism; or
  - h. A contract providing for prepaid hospital and other health care services or disability benefits.
5. “Commission” means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
6. “Criminally injurious conduct” means conduct that:
- a. Constitutes a crime as defined by the laws of this state whether or not the perpetrator of the act is convicted;
  - b. Poses a substantial threat of physical injury, extreme mental distress or death; and

- c. Is punishable by fine, imprisonment, or death, or would be punishable but the person engaging in the conduct lacked capacity to commit the crime under applicable laws.
7. “Derivative victim” means:
- a. The spouse, child, parent, stepparent, stepchild, sibling, or guardian of a victim who died as a result of criminally injurious conduct or an act of international terrorism and includes a child born after the victim’s death;
  - b. A person living in the household of a victim who died as a result of criminally injurious conduct, in a relationship determined by the Board to be substantially similar to a relationship in subsection (7)(a);
  - c. A member of the victim’s family who witnessed the criminally injurious conduct;
  - d. A nonfamily member who witnessed a violent crime;
  - e. A person whose mental health counseling and care or presence during the victim’s mental health counseling and care is required for the successful treatment of the victim.
8. “Economic loss” means financial detriment consisting only of medical expenses, mental health counseling and care expenses, work loss, and funeral expenses.
9. “Extreme mental distress” means a substantial personal disorder of emotional processes, thought or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
10. “Fund” means the Crime Victim Compensation and Assistance Fund.
11. “Funeral expense” means cost incurred as a direct result of a victim’s funeral, cremation, or burial.
12. “International terrorism” means an act as defined in 18 U.S.C. 2331 (October 29, 1992), incorporated by reference and on file with the Commission and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;
13. “Jurisdiction” means any county in this state.
14. “Medical expense” means cost related to medical care due to a physical injury resulting from

criminally injurious conduct or an act of international terrorism. Medical expense includes a cost resulting from damage to a prosthetic device or a dental device. Medical expense does not include a charge for a private room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services, unless private accommodations are medically required.

15. "Mental health counseling and care expense" means a cost related to the assessment, diagnosis, and treatment of a victim's mental and emotional health that is required to alleviate extreme mental distress resulting from criminally injurious conduct or an act of international terrorism. Mental health counseling and care expense does not include the cost for a private room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services, unless private accommodations are medically required.
16. "Operational unit" means a public or private agency authorized by the Commission to receive, evaluate, and present to the Board compensation claims from a claimant under these rules and state law.
17. "Program" means the Crime Victim Compensation Program.
18. "Subrogation" means the substitution of the state and an operational unit, to the extent that the operational unit used the operational unit's funds, in place of the claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award.
19. "Work loss" means a reduction in income from work that a victim would have performed if the victim had not been injured or killed. Work loss does not include any income earned from substitute work or income available to the victim from appropriate substitute work that the victim was capable of performing but unreasonably failed to perform.
20. "Victim" means a person who suffers physical injury, extreme mental distress, or death as a direct result of any of the following:

- a. Criminally injurious conduct;
- b. An act of international terrorism;
- c. A person's good faith effort to prevent criminally injurious conduct; or
- d. A person's good faith effort to apprehend a person suspected of engaging in criminally injurious conduct or an act of international terrorism.

**R10-4-102. Administration of the Fund**

- A. The Commission shall deposit all funds received under A.R.S. § 12-116.01 and any other funds received for compensating a crime victim in the Fund.
- B. The Commission shall designate 1 operational unit in a jurisdiction to receive an allocation from the Fund each state fiscal year.
- C. The Commission shall distribute a portion of the Fund to each designated operational unit for expenditure by the Board. Funds shall be distributed by a formula determined annually by the Commission. The formula shall be derived using:
  - 1. An analysis of prior year's expenditure history; and
  - 2. A uniform base amount with the remaining funds divided among jurisdictions based on populations.
- D. The Commission shall reserve the lesser of \$50,000 or 10% of the Fund to be used in the event of an unforeseen increase of victimization by criminally injurious conduct or an act of international terrorism, when compensation cannot be provided by an operational unit.
- E. If there is an unforeseen increase in victimization by criminally injurious conduct or an act of international terrorism, the Commission shall allow a claimant to apply directly to the Commission for compensation based on criteria established by R10-4-106.
- F. If any funds received from the Commission remain unexpended by the Board at the end of a fiscal

year, the funds shall be returned to the Commission within 45 days after the end of the fiscal year and redeposited in the Fund for use in the next fiscal year.

- G. Funds collected by an operational unit through subrogation and restitution may be retained by the operational unit to the extent authorized by the Commission and shall be used to pay compensation awards based on the criteria established by R10-4-106.
- H. An operational unit that receives additional funds for victim compensation shall submit a written report to the Commission. The report shall contain the amount of additional funds distributed to compensate crime victims. The Commission shall use the information in the written report to apply for federal matching funds from the Victims of Crime Act Fund (42 U.S.C. 10601 et. seq., [November 26, 1997]). If matching funds are received, the Commission shall forward the matching funds to the appropriate operational unit.
- I. The operational unit may use funds to pay administrative costs to the extent authorized by the Commission.

#### **R10-4-103. Statewide Operation**

For any portion of the state not served by an operational unit, the Commission may operate a compensation program in accordance with these rules or may provide for a program by contract.

#### **R10-4-104. Operational Unit Requirements**

- A. A public or private agency seeking designation as an operational unit shall submit a letter to the Commission requesting designation.
- B. To be eligible to receive designation and funding by the Commission as the operational unit for a jurisdiction, the public or private agency shall agree to:
  - 1. Not use Commission funds or federal funds to supplant funds otherwise available to the program

for crime victim compensation;

2. Make no distinction between residents and non-residents in evaluating claims made by or on behalf of victims and derivative victims of criminally injurious conduct occurring in the public or private agency's jurisdiction;
3. Forward to the Board compensation claims of victims and derivative victims of criminally injurious conduct occurring in this state;
4. Forward to the Board compensation claims of victims and derivative victims of criminally injurious conduct occurring in the public or private agency's jurisdiction;
5. Forward to the Board a compensation claim of a resident of the public or private agency's jurisdiction who is a victim or derivative victim of criminally injurious conduct or an act of international terrorism occurring in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b)(1)-(6);
6. Notify the Commission of any changes in the public or private agency's procedures before the changes take effect. If the changes are material, the public or private agency shall receive prior written approval from the Commission before instituting the changes;
7. Submit a written quarterly report to the Commission on a form provided by the Commission that describes in detail the public or private agency's activities under this rule. The report shall include:
  - a. The impact that Commission funds had on the public or private agency;
  - b. The amount and source of revenue available for victim compensation;
  - c. The total number of claims, awards, denials, pending claims, total amount of awards; and the ethnic background, disability, age, and sex of each victim;
  - d. The total number of claims for state resident and nonresident victims; the number and award

- amount by type of crime; and the number and award amount by type of expense, including medical, mental health counseling, work loss, and funeral;
- e. The type of provider for mental health counseling and care awards including psychiatrist, psychologist, rape crisis center, and community mental health center; the number, amount, and duration of mental health counseling and care awards; and
  - f. Referral sources.
8. Provide application forms to all persons who claim an award as a result of criminally injurious conduct or an act of international terrorism that occurred in the public or private agency's jurisdiction. The application form shall contain the following information:
- a. The name, address, ethnic background, age, and sex of the victim or derivative victim of the criminally injurious conduct or act of international terrorism;
  - b. The claimant's name, address and relationship to the victim;
  - c. If the victim is deceased, the name and address of each derivative victim, and the extent to which each was dependent on the victim for financial support;
  - d. The nature of the criminally injurious conduct or act of international terrorism and the date the conduct occurred;
  - e. The law enforcement agency or officer to whom the criminally injurious conduct or act of international terrorism was reported;
  - f. The nature and extent of the injuries the victim sustained from the criminally injurious conduct or act of international terrorism
  - g. The name and address of any person providing medical treatment to the victim and the name and address of any hospital or similar institution where the victim received medical treatment for the injuries;
  - h. The economic loss sustained as a result of the criminally injurious conduct or act of international



terrorism;

- i. The name and amount of any collateral source the victim, a derivative victim, or a claimant has received or is entitled to receive for economic loss as a result of the criminally injurious conduct or act of international terrorism;
  - j. An affirmation that the claimant is not:
    - i. An offender, accomplice, or facilitator of the criminally injurious conduct or an act of international terrorism;
    - ii. Serving or was not serving a sentence of imprisonment in any detention facility, home arrest program, work furlough and has not escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism.
  - k. A release authorizing the unit's investigative agent to obtain any report, document, or information that relates to the determination of a compensation claim.
9. Comply with all civil rights requirements; and
10. Ensure each compensation is monitored, investigated and substantiated before forwarding the claim to the Board for an award.

#### **R10-4-105. Crime Victim Compensation Board**

- A. Each operational unit shall establish a Crime Victim Compensation Board. The Board shall consist of an odd number with at least 3 members. The Board shall be appointed by the Commission Chairman from a list submitted by the operational unit. Members of the Board shall receive no compensation for their services.
- B. Each appointed member's term shall be 3 years; except those members first appointed. Approximately 1/3 shall be appointed for a 3-year term, 1/3 for a 2-year term, and 1/3 for a 1-year

term. All vacancies, except through the expiration of term, shall be filled for the unexpired term only. The Commission Chairman shall appoint a member to complete a vacated term from a list submitted by the operational unit.

- C. The majority of the Board membership constitutes a quorum for the transaction of business. The Board shall elect from its membership a chairman and other officers as necessary, to serve terms determined by the Board.
- D. The Board shall make a compensation award according to these rules and perform other acts necessary for the operation of the program.

#### **R10-4-106. Award Criteria**

- A. The Board shall meet at least every 60 days to decide, based on the investigative agent's findings, whether to make an award, the terms of the award, and the amount of the award. The Board shall render a decision within 60 days of receipt of an application by the operational unit except where good cause exists. The Board shall inform the applicant of the Board's decision in writing within 5 days of the decision.
- B. The Board shall not make a compensation award unless it determines that:
  - 1. Criminally injurious conduct or an act of international terrorism was committed;
  - 2. The criminally injurious conduct or act of international terrorism directly resulted in physical injury to, extreme mental distress to, or death of the victim;
  - 3. The criminally injurious conduct or act of international terrorism was reported to the appropriate law enforcement authority within 72 hours after its discovery unless good cause is shown to justify a delay; and
  - 4. The compensation application was submitted to the operational unit within 2 years of the discovery of the criminally injurious conduct or act of international terrorism unless good cause

is shown to justify a delay.

C. The Board shall make a compensation award from the Fund only for the following:

1. Medical expenses due to a victim's physical injury or death resulting from criminally injurious conduct or an act of international terrorism;
2. Work loss for
  - a. A victim's physical injury, extreme mental distress, or death resulting from criminally injurious conduct or an act of international terrorism. The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1);
  - b. A deceased victim's spouse, child, sibling, or parent if the Board determines the death resulted in a loss of support from the victim to the spouse, child, sibling, or parent. The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1);
  - c. A parent or guardian of a minor victim to transport or accompany the victim to a medical, mental health counseling and care visit, or court proceeding. The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1); or
  - d. A victim or derivative victim to attend court proceedings. The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1).

3. Funeral expenses due to a victim's death resulting from criminally injurious conduct or an act of international terrorism. The compensation award for funeral expense shall not exceed \$5,000; and
4. Mental health counseling and care expenses due to a victim's or derivative victim's extreme mental distress resulting from criminally injurious conduct or an act of international terrorism. Mental health counseling and care expenses cannot exceed a 36-month period starting with the 1<sup>st</sup> treatment. Mental health counseling and care for derivative victims shall be included as a portion of the maximum award.

D. The Board shall not make a compensation award to a claimant that exceeds:

1. Twenty thousand dollars in the aggregate for a victim and any derivative victim; and
2. The amount existing in the Fund and not committed to other compensation award at the time the Board makes the compensation award determination.

E. The Board shall deny or reduce a compensation award to a claimant if:

1. The economic loss has been recouped from a collateral source;
2. The degree of responsibility for the cause of the injury or death was due to the victim's negligence or through intentional unlawful conduct that substantially provoked or aggravated the incident causing the injury;
3. The claimant has not fully cooperated with the appropriate law enforcement agency. In determining the extent of non-cooperation, the following criteria shall be used:
  - a. The claimant failed to assist in the prosecution of a person who engaged in criminally injurious conduct or an act of international terrorism or failed to appear as a witness, the claim for a compensation award shall be denied;
  - b. The claimant initially decided not to assist in the prosecution of a suspect and later decided to assist in the prosecution and this causes the suspect of criminally injurious conduct or an

act of international terrorism to escape prosecution or directly negatively affects the prosecution, the claim for a compensation award shall be denied;

- c. The law enforcement authority indicates that the claimant was reluctant to give information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities, the award shall be reduced or denied; or
- d. If the claimant demonstrates that failure to cooperate was due to a compelling health or safety risk, the Board shall make a full award within the constraints in subsection (D).

F. If there are insufficient funds to make a compensation award, the Board may:

- 1. Deny the claim;
- 2. Make a partial award and reconsider the claim during the current fiscal year; or
- 3. Extend a valid claim into the next year.

G. The operational unit shall not provide funds to pay attorney's fees incurred by the claimant.

H. The operational unit, in its discretion, may directly pay the claimant, the provider or both.

#### **R10-4-107. Hearings and Appeals**

A. The Board, in its discretion, may conduct a hearing upon any application in accordance with A.R.S. § 41-1092 et.seq.

- 1. A claimant aggrieved by a decision of the Board may request a hearing within 30 days after service of the decision. A written request for a hearing or review of a Board decision shall specify the grounds for the request. For purposes of this paragraph, a Board decision shall be served when personally delivered or mailed by certified mail to the party at the last known residence or place of business.

2. A request for a hearing, under this rule, may be amended at any time before it is ruled on by the Board. The Board may require additional written explanation of the issue raised in the request and may provide for oral argument.
3. A hearing or review of the decision may be granted for any of the following:
  - a. Irregularity in the administrative proceedings of the Board or its operational unit, or any order of abuse or discretion, depriving the requesting party of a fair Board decision;
  - b. Board misconduct;
  - c. Newly discovered material evidence which could not with reasonable diligence been discovered and produced at the original Board meeting;
  - d. Error in the admission or rejection of evidence or other error of law occurring at the Board meeting;
  - e. The decision is not justified by the evidence or is contrary to the rules.
4. The Board may affirm or modify the decision or grant a hearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in paragraph (3). An order granting a hearing shall specify with particularity the grounds on which the hearing is granted and shall cover only those grounds specified.
5. Within 30 days after a decision is rendered, the Board may, on its own initiative, order a or review of its decision for any reason for which it might have granted a hearing on a motion of a party. After giving a party or parties notice and an opportunity to be heard on the matter, the Board may grant a request for a hearing for a reason not stated in the request. In either case, the grounds for the request shall be specified.
6. For purposes of this Section, the terms “contested case” and “party” shall be defined as provided in A.R.S. § 41-1001.
7. If the provisions of this rule are in conflict with the provisions of any statute providing for

hearings or decisions of the Board, the statutory provisions govern.

**R10-4-108. Emergency Awards**

- A. An operational unit may grant an emergency award, if there is a reasonable likelihood that the person is or will be an eligible claimant and serious hardship will result to the person if immediate payment is not made provided that:
1. The emergency award amount shall not exceed \$500; and
  2. The emergency award amount shall be deducted from the final award made to the claimant.